



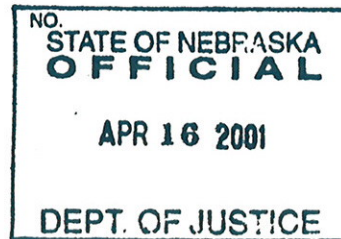
STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

#01015



DATE: April 13, 2001

SUBJECT: LB 804

REQUESTED BY: Senator Merton L. Dierks
Nebraska State Legislature

Mary Harding, Executive Director
Nebraska Environmental Trust

WRITTEN BY: Don Stenberg, Attorney General
Lynn A. Melson, Assistant Attorney General

Neb. Rev. Stat. §§ 2-5304 and 2-5305 (Cum. Supp. 2000) provide that the Director of Natural Resources, in consultation with the carbon sequestration advisory committee, shall conduct an assessment of agricultural lands in Nebraska for past carbon sequestration and future carbon sequestration potential, shall prepare a report to the Legislature on or before December 1, 2001, and shall publish a report of the findings on or before January 1, 2002. Senator Dierks has introduced LB 804 which would amend these statutes so as to provide that these duties of the Director of Natural Resources are "permissive rather than mandatory." Introducer's Statement of Intent, LB 804, dated January 30, 2001.

Jennifer M. Amen
David K. Arterburn
William R. Barger
L. Jay Bartel
Frances M. Bertsch
J. Kirk Brown
Marie C. Clarke
Delores N. Coe-Barbee

Dale A. Comer
David D. Cookson
Kyle C. Dahl
Scott G. Gunem
Susan J. Gustafson
Robert E. Harkins
Royce N. Harper
Jason W. Hayes

Amber F. Herrick
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein

Charlotte R. Koranda
George R. Love
Charles E. Lowe
Lynn A. Melson
Ronald D. Moravec
Fredrick F. Neid
Teresa J. Nutzman-Buller
Thomas J. Olsen

Hobert B. Rupe
James D. Smith
James H. Spears
Mark D. Starr
Martin Swanson
John R. Thompson
Melanie J. Whittamore-Mantzios
Linda L. Willard

In your opinion request letter you state that an environmental trust grant has been requested to partially fund the assessment and reports, but that the Environmental Trust Board is concerned that provisions of Neb. Rev. Stat. § 81-15,176 (Cum. Supp. 2000) "may prohibit funding of projects that are mandated by statute." You ask for our opinion on the meaning of § 81-15,176(2)(a) and whether the Environmental Trust Board would be in violation of this provision by funding the grant request submitted by the Director of Natural Resources.

Neb. Rev. Stat. § 81-15,176(2)(a) provides that: "[T]he board shall establish criteria for determining the eligibility of projects for grant assistance, which criteria shall include the following: (a) The grants shall not provide direct assistance to regulatory programs or to implement actions mandated by regulations except remediation; . . . " The same language is found in regulations promulgated by the Environmental Trust Board at 137 NAC 4 § 001.06, 001.07, 007.01 and 007.02. In our view, this statute and these regulations do not prohibit the Environmental Trust Board from funding the grant proposal submitted by the Director of Natural Resources.

First, it does not appear to us that the assessment of agricultural land for carbon sequestration potential and the two reports to be prepared by the Director of Natural Resources constitute a regulatory program as that term is employed in § 81-15,176(2)(a). In the absence of anything indicating to the contrary, statutory language should be given its plain and ordinary meaning. *Nickel v. Saline County School Dist. No. 163*, 251 Neb. 762, 559 N.W.2d 480 (1997). The word "regulate" has been defined to mean "to control, to direct, or govern according to a rule, principle, or system." *WEBSTER'S NEW WORLD DICTIONARY* 1197 (2nd College ed. 1982). The duties assigned to the Director of Natural Resources involve gathering data, performing an analysis and providing reports of that information. There is no regulatory aspect to those duties.

Second, the assessment and reports are not mandated by regulations. While the Director of Natural Resources is currently required by statute to conduct an assessment of agricultural lands and provide reports of the findings, we are unaware of any regulations which mandate these duties. Rules and regulations are issued by agencies after following the formal procedure set forth in the Administrative Procedure Act. Neb. Rev. Stat. §§ 84-901 to 84-920 (1999). To our knowledge, no regulations have been promulgated pursuant to Neb. Rev. Stat. §§ 2-5304 and 2-5305.


In conclusion, it is our opinion that Neb. Rev. Stat. § 81-15,176(2)(a) does not prohibit the Environmental Trust Board from funding the grant proposal submitted by the

Senator Merton L. Dierks
April 11, 2001
Page 3


Director of Natural Resources and that the Board may approve the grant proposal if it chooses to do so after consideration of all relevant criteria.

Sincerely,

DON STENBERG
Attorney General


Lynn A. Melson
Assistant Attorney General

Approved:



Attorney General

pc: Patrick J. O'Donnell
Clerk of the Legislature